

REMARKS

Reconsideration of the pending application is respectfully requested on the basis of the following particulars:

In the claims

Claims 1 is amended to recite that the terminal is configured to request functionality data from the node computer by transmitting a start sequence to the node computer, the start sequence comprising card data read from the portable data carrier and requested transaction information. Claims 9, 19, and 21 are amended to include similar features of the start sequence. Support is found at least at pages 10-12 of the original specification.

Recitation of the start sequence set forth in claim 15 is amended in view of the amendment of claim 9.

The claims are further amended, as a matter of form.

Rejection of claims 1-13 and 15-25 under 35 U.S.C. § 112, second paragraph

Claims 1-13 and 15-25 presently stand rejected as being indefinite. In particular, the examiner states that “claims 1 and 9 are directed to structure but recite limitations in terms of possibility,” and that “it has been held that actions that may or may not be done is indefinite and does not distinguish the claim from the prior art,” citing *In re Collier*, 158 USPQ 266.

Applicant respectfully submits that claims 1 and 9 are do not “recite limitations in terms of possibility,” but set out a concrete definition of the claimed system. Claims 1 and 9 recite aspects of the present invention in functional terms, which include functional elements that are conditionally performed. For example, claim 1 recites a terminal is “configured to make a determination,” and based on the determination to perform a further function.

Stated differently, according to the example above, the terminal is configured such that when a given condition exists, then a further function is performed. This is not a “term of possibility,” but a concrete statement of a function that must occur when the given condition is met, and hence a concrete characteristic possessed by the terminal.

Similarly, claim 1 requires that a terminal is configured to check whether the terminal is configured to perform a requested transaction type. Again, this is not a “term of possibility,” but a concrete statement of a characteristic of the terminal, the characteristic being the ability of the terminal to check whether or not it is configured to perform the requested transaction type.

It is respectfully submitted that claims 1 and 9 are sufficiently clear and definite that those skilled in the art would understand their scope, and therefore the claims fully comply with the requirements of 35 U.S.C. § 112, second paragraph.

In rejecting claims 4 and 10, which recite that the terminal is configured to cause (or request) transmission of functionality data following the occurrence of a predetermined event in the terminal, the examiner states that “in each instance transmission is triggered by a determination that a terminal is not suitable to perform a transaction, hence transmission cannot be based on a predetermined event unless the terminal’s lack of suitability was predetermined.”

Applicant respectfully disagrees. Applicant notes that dependent claims provide further limitations to the claims from which they depend. It is respectfully submitted that the examiner’s reasoning fails to consider that a predetermined event may be the recognition of a particular type of transaction, or another event precedent or subsequent to the determination that a terminal is not suitable to perform a transaction.

In rejecting claim 6 as indefinite, the examiner states that to one of ordinary skill a transaction comprises data, and therefore it is not clear to one of ordinary skill how a central processing unit would comprise data in a transaction. Applicant respectfully disagrees, and submits that a transaction involves parties to the transaction, and a party to a transaction may be “included in the transaction” by participating in the transaction.

Applicant notes that the term “transaction” is defined in the Merriam Webster Online Dictionary (<http://www.merriam-webster.com>), as the following:

**1 a** : something transacted; *especially* : an exchange or transfer of goods, services, or funds <electronic *transactions*>

**2 a** : an act, process, or instance of transacting **b** : a communicative action or activity involving two parties or things that reciprocally affect or influence each other

Thus, a transaction is an exchange or transfer, or a communicative action or activity involving two parties or things. Accordingly, the examiner’s interpretation of a transaction as comprising data is inaccurate, in that a transaction occurs between parties or things. Clearly, a person skilled in the art would understand that a central processing unit can be involved in a transaction as one of the parties or things involved in a communicative action or in an exchange of data. Accordingly, it is respectfully submitted that claim 6 is clear and definite.

The examiner states that “claim 21 is directed to a terminal suitable for performing a transaction. However, the claim also recites transmitting a start sequence designating at least one transaction the terminal is *not suitable* for performing.”

It is respectfully submitted that the terminal being suitable for performing a transaction does not foreclose the possibility that the terminal is not suitable for performing another, different transaction. It is respectfully submitted that a person skilled in the art would understand that “at least one transaction the terminal is not suitable for performing” is different and distinct from the transaction that the terminal is suitable for performing. Accordingly, it is respectfully submitted that claim 21 is clear and definite.

For at least the foregoing reasons, it is respectfully submitted that the claims as amended are clear and definite, and withdrawal of the rejection is requested.

Rejection of claims 1-25 under 35 U.S.C. § 103(a)

Claims 1-25 presently stand rejected as being unpatentable over Daly (U.S. 5,878,141) in view of Southgate (U.S. 6,205,579). This rejection is respectfully traversed for at least the following reasons.

As noted above, the independent claims (claims 1, 9, 19, and 21) are amended to recite that a start sequence, comprising card data read from the portable data carrier and requested transaction information, is sent to the node computer to request functionality data which configures a terminal to perform a requested transaction that the terminal is not presently configured to perform.

It is respectfully submitted that none of the cited references disclose or suggest such a start sequence.

Further, Applicant agrees with the examiner's observation that "Daly et al. do not specifically recite a terminal making a determination whether it is capable to perform a transaction and if not retrieving from a host computer data for enabling the performance of said transaction."

However, Applicant disagrees with the examiner's interpretation that Southgate discloses "a terminal makes a determination that the terminal is not suited to perform a request."

Southgate is directed to upgrading existing software on a computer platform (see *Southgate*; abstract), and more specifically to a method by which software upgrades and fixes for software bugs may be incorporated into a customer's software from a remote location (see *Southgate*; col. 2, lines 32-35). The upgrade is to an existing piece of software, such as to fix an existing bug.

However, Southgate makes no teaching or suggestion that "a terminal makes a determination that the terminal is not suited to perform a request." Southgate provides that "when, during operation of software on a user's platform (step 402), either *an error occurs*, the user indicates that in her opinion an error has occurred, or the user wishes to requests an enhancement to the software (step 404), the software determines whether access to the Internet is available (step 406) for the purpose of connecting to the vendor of the software." (*Southgate*; col. 8, lines 34-40).

It is respectfully submitted that simply detecting an error, and reacting to the error detection, is different from determining if a terminal is configured to perform a requested transaction.

In fact, it is respectfully submitted that it is only when performing a requested transaction (executing a program according to a user command) that a terminal is configured to perform (albeit with flawed software) that such an error will be encountered.

This is because Southgate does not disclose or suggest in any way making a determination, prior to performing a transaction, that a terminal is configured or not configured to perform the requested transaction.

Southgate provides an update or error correction method that is executed between a user terminal and a software provider host. Software to be updated or corrected is already installed on the user's terminal, and in fact has been started (*Southgate*; col. 6, lines 29-31; col. 8, lines 34-35; Fig. 3, step 302; Fig. 4a, step 402).

*After* the software has been started, and with the further requirement that an Internet connection has been set up, an error correction routine can be obtained from a host connected to the user terminal via the Internet (see *Southgate*; steps 304, 406). However, the host is only involved if expressly confirmed by the user (see *Southgate*; steps 310, 410).

Thus, Southgate teaches a method wherein an existing software functionality is maintained updated and error-free by informing the user about respective updates and possibly obtaining new or debugged parts of the software from the host to update the existing software. However, for the method to work, the software functionality must be already installed on the terminal. The functionality of the software is not changed by the error corrections or updates.

Since the software functionality must be already installed on the terminal, and must be started before any errors in the software functionality may be encountered, this cannot be construed as a terminal being configured to make a determination if the terminal is *not configured to perform* a requested transaction type.

It must be appreciated that Southgate begins with the premise that “no software program is ever bug free.” (*Southgate*; col. 2, line 41). Following this assertion, it cannot follow from Southgate that when a piece of software is installed on a computer system to perform a particular function, the computer system can be considered to be “not configured” to perform the function. Clearly, if “no software program is ever bug free” as Southgate asserts, a computer system could never be considered to be “configured to perform a requested transaction” if the presence of bugs in the installed piece of software renders the computer system “not configured to perform” the functionality of the installed piece of software.

It is respectfully submitted that a combination of Daly and Southgate does not teach or suggest “said terminals being configured to make a determination if the terminal is not configured to perform the requested transaction type,” and “based on a determination that the terminal is not configured to perform the requested transaction to request functionality data from said node computer.”

Moreover, neither reference discloses or suggests transmitting a start sequence comprising card data read from a portable data carrier and requested transaction information.

For at least these reasons, it is respectfully submitted that Daly and Southgate fail to form a prima facie case of obviousness of independent claims 1, 9, 19, and 21, and therefore claims 1-13 and 15-25 are allowable over the cited references. Accordingly, withdrawal of the rejection is requested.

#### Conclusion

In view of the amendments to the claims, and in further view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is requested that claims 1-13 and 15-25 be allowed and the application be passed to issue.


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Examiner: C. L. Hewitt II  
Art Unit: 3621

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicant's attorney, the Examiner is invited to contact the undersigned at the numbers shown.

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Respectfully submitted,

  
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